

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 231 OF 2021

Dushyant Shankar Bhatkar

... Appellant

V/s.

Manish Madhukar Padave

... Respondent

Mr.Bhavesh Parmar a/w Mr.Devmani Shukla, Mr. Vivekanand Akashali,
Ms.Reshma Nair for the Appellant.

Mr.S. C. Mangle i/b. Mr. Harshad Sathe for the Respondent.

CORAM : A.S. GADKARI, J.

DATE : 10th December 2021

PC. :

1. Appellant/Original Plaintiff has preferred the present Appeal under Section 100 of Civil Procedure Code, 1908, against impugned Judgment and Order dated 9th December, 2019, passed in Regular Civil Appeal No.48 of 2019, by the learned Principal District Judge, Ratnagiri, dismissing the said Appeal preferred by the Appellant, thereby confirming the Judgment and Order dated 26th April, 2019 passed in Regular Civil Suit No.98 of 2017 by the learned 4th Joint Civil Judge (Junior Division), Ratnagiri.

2. Heard Mr. Bhavesh Parmar, learned Counsel for the Appellant and Mr. S. C. Mangle, learned Advocate for the Respondent. Perused record.

3. Record discloses that, the Appellant had filed Regular Civil Suit No.98 of 2017 under Sections 38 and 39 of the Specific Relief Act, seeking injunction against the Respondent for creating obstruction from the right of

way and for specific directions for demolishing the wall constructed by the Respondent allegedly in the way of the Appellant to reach his proposed under construction house. The detailed description of the said wall has been mentioned in paragraph No.1 of the plaint of Regular Civil Suit No.98 of 2017. After receipt of summons, the Respondent appeared in the said Suit and filed his written statement (Exh.-19). The Trial Court framed issues below Exh.-29. Appellant examined three witnesses in support of his case. The Trial Court after recording evidence and hearing the Advocates for the respective parties, was pleased to dismiss the said Suit.

The Trial Court has recorded categorical findings that, the Appellant has another existing road, i.e. the Municipality Road to go to his property. It is not established that, the Respondent has created hurdle in the peaceful use of the subject road. That, the Appellant has failed to prove that, the Respondent is causing any obstruction in the peaceful use and occupation of right of way towards the Appellant's property. It has been further held that, the Appellant and Respondent both are having interest in the said property i.e. City Survey No.3286 as they are co-sharers.

4. Being aggrieved by the Judgment and Decree passed in Regular Civil Suit No.98 of 2017, the Appellant preferred Regular Civil Appeal No.48 of 2019 before the Principal District Judge, Ratnagiri. The Appellate Court by its impugned Judgment and order dated 9th December, 2019 Has dismissed

the said Appeal with costs.

5. Mr. Bhavesh Parmar, learned Advocate for the Appellant submitted that, the Trial Court has committed an error in entering into adjudication of ownership of land and demarcation of the suit structure.

Per contra, Mr. Mangle learned Advocate for the Respondent submitted that, as far as the claim of Appellant is concerned, the Appellate Court has held that even if the Respondent has constructed the alleged wall unauthorizedly, the Municipal Council has not been made necessary party to the said suit and it is defective for not joining necessary party. He therefore submitted that, both the Courts below have not committed any error in appreciating the correct facts and the evidence on record.

6. It is a matter of fact on record that, it has been proved by the Respondent by preponderance of all probabilities that, he has not obstructed way to the house of the Appellant. The Appellant is having a separate and independent road to approach his new house. The Appellant and Respondent are co-sharers in the land on which the alleged wall is constructed. The wall in question has been re-erected by the Respondent after it broken down.

In view of duly established facts on records, the Trial Court has dismissed the Suit filed by the Appellant, which has been further confirmed by the Appellate Court by its impugned Judgment and Order dated 9th December, 2019.

7. Perusal of Judgments and Orders passed by both the Courts below clearly indicate that, they have not committed any error either in law or on facts and in particular while appreciating the evidence on record.

Having heard learned Advocates for the respective parties and after perusal of entire record, this Court is of the view that, there is no substantial question of law involved in the present Appeal.

Appeal being *dehors* of merits, is accordingly dismissed.

[A.S. GADKARI, J.]